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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,860	04/02/2001	Stein A. Lundby	QCPA793C1	1089

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Qualcomm Incorporated
Patents Department
5775 Morehouse Drive
San Diego, CA 92121-1714

EXAMINER

TRINH, SONNY

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/824,860

Applicant(s)

LUNDBY ET AL.

Examiner

Sonny TRINH

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-11 and 21-23 in Paper No. 5 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. **Claims 1-11, 21-23** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-57 of U.S. Patent No. 6,249,683. Although the conflicting claims are not identical, they are not patentably distinct from each other because patent granted to Lunby et al., (6,249,683)

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with common assignee, discloses the claimed invention of claims **1-15, 17-18, 20-23**, in particular see figs.1A-2L, abstract, summary and claims 1-27 of Patent No. 6,249,683.

Limitations of **claim 1** of the pending application recites:

In a communication system, a method comprising:

(1) forming a first stream of power control commands for controlling transmit power levels of a plurality of different data streams;

(2) controlling a transmit power level of at least a first and second data stream in said plurality of different data streams in accordance with the first stream of power control commands.

Limitations (1) and (2) are taught by claim 1, steps (c) and (h), of Patent 6,249,683 (claim 1, column 28).

Limitations of **claim 2** of the pending application recites:

(1) transmitting the first data stream from a first base station to a mobile station, and transmitting the second data stream from a second base station to the mobile station, after adjusting transmit power level of said first and second data streams in accordance with the first stream of power control commands.

Limitation (1) is taught by claim 2, steps (a), (b) and (c) of Patent 6,249,683 (claim 2, column 28).

Limitations of **claim 3** of the pending application recites:

(1) receiving the first and second data streams, at a mobile station, with a transmit power level of said first and second data streams adjusted in accordance with the first stream of power control commands.

Limitation (1) is taught by claim 3, of Patent 6,249,683.

Limitations of **claim 4** of the pending application recites:

(1) forming a power control signal from the first stream of power control commands;

(2) transmitting the power control signal from a mobile station to at least one base station;

(3) re-forming the first received stream of power control commands from the received power control signal at the at least one base station.

Limitations (1-3) are also encompassed by claim 3, of Patent 6,249,683.

Limitations of **claims 5-7, 9-11** of the pending application are also taught by claims 7-12 (respectively) of Patent 6,249,683.

Limitations of **claim 8** of the pending application are also taught by claims 7-8 (combined) of Patent 6,249,683.

Regarding **claims 21-23**, these claims merely reflect the apparatus for performing the method claims of claims 1-3 and are also encompassed by claims 1-3 of Patent 6,249,683.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. **Claims 1, 9-11, 21** are rejected under 35 U.S.C. 102(e) as being anticipated by Jalali et al. ("jalali"; U.S. Patent Number 6,154,659).

Regarding **claims 1 and 21**, Jalali discloses a fast forward link power control in a CDMA system. Jalali further discloses a communication system apparatus and method comprising:

forming a first stream of power control commands for controlling transmit power levels of a plurality of different data streams (column 3, line 53 to column 4 line 8);

controlling a transmit power level of at least a first and second data stream in said plurality of different data streams in accordance with the first stream of power control commands (figure 26, column 27 lines 33-49).

Regarding **claim 9**, Jalali further teaches that the first stream of power control commands is based on an error rate associated with either the first or second data stream (column 6, specifically lines 32-37).

Regarding **claims 10-11**, Jalali further teaches that the power control commands is based on a signal-to-noise ratio associated with either the first or second received

data stream to either increase or decrease or remain at the same transmit power of the first or second data streams (column 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 5-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Jalali et al. ("jalali"; U.S. Patent Number 6,154,659).

Regarding **claims 5-8**, Jalali teaches the invention as specified in claim 1 including the different data streams but does not explicitly disclose that the first data stream contains a voice data, the second data stream contains a fax data, or the second data stream contains an internet transmission, nor the first data stream contains voice data, and the second data stream contains information data.

However, the voice data, fax data, internet data are well known and widely used in the telecommunication system and the Examiner takes Official notice of the different data formats (see also column 6 lines 23-26). The motivation for providing different data format in a stream of data is to provide the user with a variety of different services in order to attract and to maintain the customer's interests.

Citation of Pertinent Prior Art

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Inventor	Publication	Number	Disclosure
Dahlman et al.	US Patent	6,173,162	Multiple code channel power control in a radio communication system.
Secord et al.	US Patent	6,373,831	Systems and methods of channel coding and inverse multiplexing for multi carrier CDMA systems.
Jalali	US Patent	6,233,439	Signal to noise estimation of forward link traffic channel for fast power control.
Chheda et al.	US Patent	6,073,025	Base station power control during a soft hand-off.

Conclusion

Any response to this action should be mailed to:

*Commissioner of Patents and Trademarks
Washington, D.C. 20231*

or faxed to:

(703) 872-9306, (for formal communications intended for entry, for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, 6th Floor (Receptionist).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sonny Trinh whose telephone number is (703) 305-1961. The examiner can normally be reached Monday through Thursdays from 7:00 am to 4:00 p.m., and on alternate Fridays.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 306-0377.

Sonny Trinh

Patent Examiner
1/12/04

SONNY TRINH
PATENT EXAMINER

S.T.